IN THE HIGH COURT OF PUNAJB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 2467 of 1983
Date of Decision: September 12, 2007

Mahant Vijay Muni ..... Appellant

versus

Gram Panchayat of village Bambeli and others ..... Respondents

PRESENT: Shri Sanjay Majithia, and
Shri Sailender Sharma, Advocates for the appellants

Shri P.K. Palli, Senior Advocate with
Shri Parminder Singh Kanwar, Advocate for respondent No.5

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgement and decree passed by the learned Courts below arising out of suit for permanent injunction in respect of the land measuring 40 Kanals 14 Marlas situated in village Surapur, Tehsil Garhshankar, District Hoshiarpur; land 30 Kanals 5 Marlas situated in village Bambeli, Tehsil Garhshankar, District Hoshiarpur; and land measuring 99 Kanals 5 Marlas situated in village Binewal, Tehsil Garhshankar, District Hoshiarpur.

It was found that plaintiff was not in possession of the land situated in village Bambeli whereas in respect of suit land situated in villages Surapur and Binewal, the plaintiff, though in possession, was not found entitled to injunction as the plaintiff was a trespasser, therefore, not entitled to injunction against the true owner.

As per plaintiff, Mahant Jamna Dass was the owner of

the suit land. He executed a registered Will dated 4.3.1970, Exhibit P-3, dedicating the aforesaid property to the Samadhs of Bawa Hem Dass and Baba Prem Dass but appointed the plaintiff as his Chela to manage the aforesaid property. It was, thus, asserted that the plaintiff as the Chela of Mahant Jamna Dass has the right to manage the property as her Chela. It may be noticed that Mahant Jamna Dass died on 27.05.1975. The said suit was filed on 26.6.1975.

In support of the plea that the property was the personal property of Mahant Jamna Dass, the plaintiff relied upon revenue record wherein in column of ownership, Mahant Jamna Dass was reflected as owner and in the earlier jamabandis, his Gurus were reflected as owner in possession. It was contended that though the property was inherited from Mahant to Chela but such inheritance was in respect of personal property of the Mahant and it was for the first time Mahant Jamna Dass created a public endowment vide Will dated 4.3.1970. It was the stand of the plaintiff that after the death of Mahant Jamna Dass, she as her Chela has taken over the management of the Dera property and has a right to manage the same to the exclusion of all other persons. On the other hand, it was the stand of the defendants that the property was not purchased by Mahant Jamna Dass out of his own sources but was inherited from Mahant to Chela. Since the property was being transferred from Mahant to Chela and was not created by Mahant Jamna Dass out of his own exertion, the property in the hands of Mahant Jamna Dass was religious property of which he was the manager. It was, thus, contended that even if the property continues to be reflected in the name of an individual but that is only for the purpose of revenue and the property vested with the religious institutions. It was further stated that

defendant No.5, Chela of Mahant Jamna Dass, has been appointed as successor of Mahant Jamna Dass by the Bheikh and, therefore, it is defendant No.5 who has a right to manage the property of the religious institutions as its Mahant.

It may be noticed that at the time of filing of suit, the plaintiff has not challenged the appointment of defendant No.5 as Mahant. It was only when defendant No.5 asserted his appointment as Mahant by the Bheikh on 10.10.1975, the plaintiff amended the plaint so as to assert her appointment as Mahant vide interim order dated 20.07.1975.

On the pleadings of the parties, following issues were framed:-

1. Whether Mahant Jamna Dass deceased was in possession of the property in dispute as owner ? OPP
2. Whether the property in dispute was already a dedicated and religious property given in the life time of Mahant Jamna Dass ? OPD
3. Whether Mahant Jamna Dass has executed a valid Will in favour of the plaintiff on 4.3.1970 as alleged in para No.3 of the plaint ? OPP
4. If issues No.2 and 3 are proved, whether Mahant Jamna Dass was competent to make a Will in question? OPP
5. Whether Mahant Jamna Dass dedicated the suit property in the names of Samadhs of Baba Hem Dass and Prem Dass under the aforesaid Will ? OPP
6. Whether late Mahant Jamna Dass appointed the plaintiff as Mahant to manage the suit property after his death under the alleged Will dated 4.3.1970 ? OPP
7. Whether the plaintiff is in possession of the suit property after the death of Mahant Jamna Dass and to what effect ? OPP

8. If issue No.7 is proved, whether the appointment of Mahant Vijay Muni as such is illegal and void on the ground that she is a female ? OPD
9. Whether a Mahant could not be appointed without the approval of the Bheikh and Mahant of Bahadurpur ? OPD
9-A Whether the plaintiff has been duly appointed as the Mahant of the disputed shrine by the Bheikh on 20.07.1975 as alleged in the replication ? OPP
9-B. Whether the Bheikh has appointed Shri Nand Ram defendant as the Mahant of the disputed shrine as alleged in the amended written statement ? OPD Nand Ram
10. Relief.

Though the learned trial Court answered Issue No. 9 in favour of the defendants and against the plaintiff, but the learned first Appellate Court found that such issue did not arise out of the pleadings of the parties as there was no factual assertion made by the defendants in their written statement and, therefore, Issue No.9 was not required to be framed. Both the Courts below have decided Issue No.3 in favour of the plaintiff but Issues No.4 and 5 were decided against the plaintiff and in favour of the defendants. In respect of Issue No.6, it was held that though in the Will, the plaintiff has been appointed as Mahant but such appointment is not final and is subject to ratification and confirmation by Bheikh i.e., religious fraternity of Udasi Sampardaya to which the property belonged. Under Issues No.6 and 8, it was found that the plaintiff is not in possession of land in village Bambeli where the Dera and the land appurtenant is situated but is not entitled to injunction in respect of other land as she is in unauthorised possession of the same. Under Issues No.9-A and 9-B, it has been found that

it is defendant No.5 who has been appointed as Mahant by the Bheikh.

In view of the findings recorded, the controversy in the second appeal is in a narrow compass. The following substantial questions of law arise for consideration by this Court:-

1. Whether Mahant Jamna Dass was in possession of the property in dispute as owner in his individual capacity or he as Mahant was the manager of the religious property ?
2. Whether plaintiff or defendants No.5 has been appointed as Mahant by Bheikh ?
3. Whether plaintiff is entitled to the injunction in respect of the land situated in villages Surapur and Binewal ?

The plaintiff appearing as her own witness as PW1 has stated in her examination-in-chief itself that the property in dispute belongs to Udasi Sampardaya and all the Mahants mentioned by her belong to Udasi sect. She has also admitted that Gaddi of Mahantship goes from Mahant to Chela. Para 89 of the Rattigan's Digest of Customary Law is to the effect that all the property acquired by individual members of a religious fraternity belongs, as a general rule, to the religious institution to which they are attached. Para 87 of the said Digest provides that by entering into a religious fraternity a person presumably ceases to be qualified to perform purely worldly acts, and loses all rights of inheritance in his natural family.

It is undisputed that Mahant Jamna Dass has not acquired any part of the property situated in three villages, namely, Bambeli, Surapur and Binewal, by his own money or by his own exertion. In fact, such is the statement of PW1 Vijay Muni herself. In revenue record, the property in dispute is reflected to have transferred from Guru to Chela. Exhibit D-31

relates to village Bambeli; Exhibit D-51 is a copy of settlement entries of the year 1912-13 reflecting Mahant Uttam Dass as occupancy tenant. Exhibit D-52 is again jamabandi for the year 1945-46 wherein Mahant Uttam Dass is shown as occupancy tenant. In Revenue Judgement No.2 titled **Sher Singh and others vs. Saya Ram Dass** in **1907 Punjab Records**, though is a judgement of the Financial Commissioner, but in the absence of any other precedent either way, it is fair to rely on such order which appears to be fair and reasonable. The said principle is being applied for the last more than 100 years as well. It was held that in respect of the occupancy rights belonging to a religious institution, the Chela of the last incumbent who has become the Mahant of the institution, is entitled to succeed in his representative capacity as head of such institution. Therefore, even though Mahant Uttam Dass was reflected to be occupancy tenant but he was representing the religious institution in representative capacity which right stands inherited by his Chela on his appointment as Mahant.

In **Raghunath Das vs. Ganpat Rai and others, AIR 1934 Lahore 449,** it was held to the following effect:-

> " The revenue authorities can only function through a human agency. They cannot enter into any transaction with a legal entity like an idol installed in a thakardwara. The name of the Mahant or trustee is, therefore, generally entered in the column of owner, so that the revenue authorities may have dealings with him in all those matters which concern the thakardwara or the religious institution in question. Hence the mere entry of the name of the Mahant in the column of owner does not prove that the property was his private and exclusive property".

Still further, the learned First Appellate Court has

considered in detail the previous litigation between Mahants earlier in respect of the same property and held that in none of the earlier litigation, none of the Mahants ever treated the property as their own property.

The principle that if the property passes from Guru to Chela, the property is religious was first recognised in **Ram Singh vs. Nehal Singh (1889) 136 Punjab Records 1889,** when it was held to the following effect:-

> "No one would have any doubt that if a Sadhu himself acquires property, and does not devote it to religious purposes (and a Sadhu can acquire property), he remains absolute arbiter of the disposal of the property; but if the property has once passed to a Chela in virtue of his being Chela to the exclusion of natural heirs, it certainly would be only reasonable to hold that the Chela must treat the property as religious".

Such principle was quoted with approval in **Inder Singh and another vs. Fateh Singh, AIR 1921 Lahore 337,** wherein it was held to the following effect:-

> "...If, however, it is shown that any part of the property has descended from one granthi to another to the exclusion of the natural heirs, then it appears to us that a presumption must arise that such property has been dedicated to religious uses even if there be no positive evidence of actual dedication".

In **Saram Dass and others vs. Shiromani Gurdwaras Parbandhak Committee, Amritsar, AIR 1933 Lahore 252,** it was held that if the house is devolved upon the petitioner from his Guru, there is presumption that the property has ceased to be secular, such presumption is reasonable one.

Therefore, mere fact that in revenue record, the Mahants are reflected to be in the ownership column is not relevant to hold that, in fact, it is private property. The nature of the property and the way it has succeeded from Guru to Chela, leaves no manner of doubt that it is a religious property and belongs to Udasi sect. Therefore, the findings recorded by the learned Courts below that it is the property of the religious institution is a finding based on evidence and there is no reasonable basis to upset the said finding in second appeal.

In view of the above discussion, I have no hesitation to affirm the findings recorded by the learned Courts below. Thus, the first substantial question of law is decided holding that the property comprised in three villages was not the personal and individual property of Mahant Jamna Dass but he was managing the property as Mahant of the religious institution.

In respect of second substantial question of law, both the parties have addressed arguments on the role of Mahant of Sri Bhadurpur in the matter of appointment of Mahant in the present suit as well. The learned First Appellate Court rightly found that Issue No.9 was not required to be framed without pleading and even if any finding is required then in view of the previous judgement referred to above, it should be deemed to be held that without the participation of Mahant of Bahadurpur, Bheikh could make appointment of new Mahant. It was found that reliance by the learned trial Court on judgement dated 4.7.1940, Exhibit D-37, is not tenable as in appeal the matter was referred to the arbitrator and the matter was decided on the basis of award of the arbitrator and, therefore, any finding recorded in judgement dated 4.7.1940 is rendered redundant. There has been earlier

litigation in respect of same property between earlier Mahants. Exhibit P-35 is the judgement given by Sub Judge Ist Class, Hoshiarpur, in suit filed by Mahant Ganga Dass against Mahant Jamna Dass. It was found therein that in Bheikh convened on 28.06.1956, Mahant Sewa Dass, the then Mahant of Sri Bahadurpur, was also present besides large number of Mahants. In the said Bheikh, Jamna Dass was appointed as Mahant. The Court has found that statement of Mahant Sewa Dass does not inspire confidence that no Mahant of Bambeli could relinquish the office even without the permission of Mahant of Bahadurpur. But a finding was recorded that Jamna Dass was appointed as Mahant by the Bheikh on 28.06.1956 after turban was tied on his head; a Saropa was given to Mahant Jamna Dass; Akhand Path was recited and Parshad was distributed amongst the gathering. The said judgement was set aside by the Senior Sub Judge with enhanced Appellate Powers on 31.10.1960 but in Regular Second Appeal No. 1800 of 1960 titled **Mahant Jamna Dass Chela Mahant Uttam Dass vs. Mahant Ganga Ram alias Mahant Ganga Dass** decided on 06.09.1961, Exhibit P-34, this Court set aside the judgement of the learned First Appellate Court and restored that of the learned trial Court, Exhibit P-35.

The defendant has relied upon document Exhibit D-2 dated 12.06.1975. Vide the aforesaid writing, many persons have requested Mahant Sewa Dass, Bahadurpur, to perform the ceremonies for the appointment of Mahant. Vide writing Exhibit D-1 dated 20.06.1975 wherein reference is also made to earlier writing of 12.06.1975, records the minutes of the meeting held under the chairmanship of Mahant Sewa Dass. It was resolved that land of Dera be cultivated and sown with the help of tractor by the Panchayat and the Panchayat will keep record of the income and

expenses. Such minutes are signed by the plaintiff herself as well. Exhibit D-4 is the writing dated 14.07.1975, which records the minutes of the meeting held again under the chairmanship of Mahant Sewa Dass, whereby, on the request of the plaintiff, meeting of the Bheikh was deferred to 17.07.1995. The said writing is again signed by the plaintiff. The plaintiff has not made any mention of writing dated 12.06.1975 and 20.06.1975 in the plaint which was filed on 26.06.1975. It was only after defendant No.5 pleaded that he has been appointed as a Mahant on 10.10.1975, the plaintiff amended the suit to assert her appointment as Mahant on 20.07.1975. Earlier, she was asserting her rights only by virtue of Will dated 4.3.1970.

The learned First Appellate Court has found that on 20.06.1975, the plaintiff has signed resolution Exhibit D-2 giving land of village Bambeli to the Gram Panchayat till the appointment of new Mahant. Still further, on 14.07.1975, the plaintiff sought more time from Mahant Sewa Dass to establish her claim as Mahantship. At her request, Bheikh was not convened. The learned Court found that Mahant Sewa Dass of Bahadurpur was wielding great influence in the matter of appointment of a new Mahant. The plaintiff out of sheer frustration called her few sympathisers and performed the ceremony of her appointment. In fact, the learned trial Court made spot inspection and gave his report dated 11.04.1981. It was found that the so called ceremony of appointment of the plaintiff has not taken place in the Dera. It was found that the photographs did not depict any sign of the Dera to show that the ceremony was performed at the seat of the Dera. It was the categorical case of all the witnesses of the plaintiff that the Bheikh met on 20.07.1975 at Dera to appoint the plaintiff as Mahant. It was, thus, concluded that the plaintiff's

appointment was made by her sympathisers at somewhere else in a bid to put claim against the property of the Dera and that there is no definite proof that the so called appointment of the plaintiff was made as propounded and that too prior to the appointment of defendant No.5 as Mahant on 10.10.1975. The Court found that appointment of defendant No.5 by Bheikh including by Mahant Sewa Dass on 10.10.1975 in the Dera itself could not be questioned seriously. The photographs brought on record are a clear cut proof of the gathering of the Mahants of Deras in the neighbourhood including Mahant Sewa Dass and the appointment ceremony in the Dera.

As regards the appointment of Nand Ram as Mahant is concerned, it has been found that though Nand Ram is married having children and is doing medical profession but the photographs taken at the time of appointment ceremony of Mahant Jamna Dass shows that Nand Ram is present to watch the ceremony. From those photographs, it cannot be said that Mahant Nand Ram was Udasi Sadhu but it can certainly show that his inclination was towards the sect of Udasi when Mahant Jamna Dass was installed as head of the Dera. Defendant No.5 is asserting his claim as Chela from the very beginning and that on 14.07.1975, the claim of Mahant was by four Chelas including plaintiff and defendant No.5. No doubt, Mahant Jamna Dass could nominate a successor but such appointments are subject to confirmation by the Bheikh. Para 85 of the Rattigan's Digest of Customary Law provides that the office of Mahant is usually elective and not hereditary. But a Mahant may nominate a successor subject to confirmation by his fraternity. In **Jiwan Dass vs. Hira Dass, AIR 1937 Lahore 311,** it has been held that where a Mahant of Thakardwara or Bairagis nominates his successor, still the appointment rests with the

Bheikh and the confirmation and election is necessary. This being a generally recognised custom, strong evidence is always required to establish a custom contrary to it. No custom to the contrary has been shown by the plaintiff. In fact, resolution Exhibit D-4 dated 14.07.1975 itself stipulates the confirmation of Mahant by the Bheikh.

In **Satnam Singh vs. Bhagwan Singh, AIR 1938 PC 216,** it has been held by the Supreme Court that even where the Mahant has the power to appoint his successor, it is the custom in various Maths that such appointments should be confirmed or recognised by the members of the religious fraternity to which the deceased belonged. Such was also the view taken by a Division Bench of this Court in **Hem Raj vs. Nand Kishore, 1994(1) Recent Civil Reports 653,** wherein it was held to the following effect:-

> "This is no general law applicable to religious institutions and the members of such institutions are governed exclusively by the customs and usages of the particulars institution to which they belong. There are, however, certain broad propositions which have received general recognition from judicial decisions, the property in dispute is a religious property which vested in Mathra Dass – deceased as a Mahant and the question that arose in the suit out of which the present appeals have arisen was as to who should succeed as a Mahant on the death of Mathra Dass. It is not disputed that the parties before us are Bairagis. According to para 85 of the Rattigan's Digest of Customary Law 15th Edition "the office of Mahant is usually elective and not hereditary. But a Mahant may nominate a successor subject to confirmation by his fraternity". It is also stated in the Digest that the question as to who has the right to succeed to the office of Mahant depends upon the custom

> and usage of the particular "Math" and that each institution has his own usage governing such succession. It is further stated that the custom that prevails in most of the cases is that the Mahant nominates his successor by appointment during his life time or by Will. When there is no such custom or where no nomination has been made, the usage of some institutions is to have the successor appointed by a system of election by the Bhek. The recognised custom amongst the Bariagis as stated in Rattigan's Digest in which a reference has been made to a judgment of the Lahore High Court in **Jiwan Dass vs. Hira Dass, AIR 1937 Lahore 311** is that even where a Mahant has appointed his successor during his life time, still the appointment has to be confirmed by the Bhek".

Learned counsel for the appellant has referred to a Division Bench judgement reported as **Bagga Singh and another vs. Shiromani Gurdwara Parbandhak Committee, 1992(1) Revenue Law Reporter 170** , wherein in the facts of the case it was found that succession to the landed property passing from Guru to Chela does not necessarily lead to conclusion that property when acquired by Mahant loses its secular character and partakes of religious character. Such finding was returned on the basis of the fact that there was no allegation or proof that the land was given to the Mahant for religious and charitable purpose. Therefore, such judgement is clearly distinguishable as it is the statement of the plaintiff herself that the land was acquired by Mahant Uttam Dass and that the land belongs to Udasi Sampardaya. It is the statement of the plaintiff herself that Mahant Jamna Dass has not acquired any land from is own resources.

Learned First Appellate Court has considered the fact that Nand Ram is married but held that such marriage does not disentitle him for appointment as Mahant. It has been rightly held that what is

required for appointment of Mahant is the faith in the Udasi sect which is allowed by the fraternity i.e. Bheikh. The finding recorded that Bheikh has not appointed the plaintiff as Mahant but instead appointed Nand Ram defendant No.5 as Mahant is a finding of fact based upon appreciation of evidence. It could not be pointed out that any evidence has been misread or has not been taken into consideration. Consequently, such findings are affirmed. Thus, the second substantial question of law is decided holding that it is Nand Ram who has been appointed as Mahant and not the plaintiff.

Both the learned Courts below have found as a matter of fact that the plaintiff is not in possession of the Dera situated in village Bambeli and the land attached thereto. Both the Courts below have the plaintiff to be in possession of the land in two other villages, namely, Surapur and Binewal, but declined the injunction for the reason that the plaintiff is in unauthorised possession and, therefore, not entitled to injunction against the true owner.

Learned counsel for the appellant has vehemently argued that the plaintiff having been found in possession is entitled to protect her possession. However, I do not find any merit in the said argument. The present suit was filed on 26.06.1975 i.e., within one month of the death of Mahant Jamna Dass. The plaintiff has asserted her possession on the basis of her appointment as Mahant by virtue of Will dated 4.3.1970. Though the plaintiff asserted her appointment as Mahant by Bheikh as well but such stand has not been found to be correct. The question which arises is where the plaintiff who claimed appointment as Mahant but fails to substantiate the same, whether such plaintiff would be entitled to injunction against the Manager managing the property of the religious institutions. Firstly, the

rights of the parties have to be examined on the date of filing of the suit. Reference may be made to **Atma Ram Mittal vs. Ishwar Singh Punia, AIR 1988 SC 2031,** wherein it is mentioned that Broom has stated the maxim "actus curia neminem gravibit" an act of Court shall prejudice no man. It was observed that it is well settled that no man shall should suffer because of fault of the Court or delay in the procedure. Thus, it was concluded that once right crystallise, the adjudication must be in accordance with law. In **Gaya Prasad vs. Pradeep Srivastava, 2001(2) Supreme Court Cases 604,** it has been held that the crucial date for deciding the bona fides of the requirement of landlord is the date of his application for eviction. In **Rakesh Kumar vs. Kesho Ram, 1992 Supp (2) Supreme Court Cases 623,** Hon'ble Supreme Court has pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced. It was held as under:-

> " The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief".

Subsequently, in **Kamleshwar Prasad vs. Pradumanju Agarwal, (1997) 4 Suprem Court Cases 413,** Supreme Court held that the crucial date normally is the date of filing of the petition. It was held that even the subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide

need established by him earlier.

It cannot be said that on the date of filing of the suit, the plaintiff was in established possession. The right of management became subject matter of dispute on the death of Mahant Jamna Dass on 27.05.1975 and within one month, the plaintiff was in Court. Even otherwise, the dispute, admittedly, boils down to the right of management of religious institutions. Therefore, possession of the plaintiff in respect of the land of two villages is not possession in her own right but as the person who claims to have right to manage the religious property as Manager. Such right has remained unsuccessful. The plaintiff has no personal right in the religious property. As Manager, the plaintiff has only right to manage the property, which right cannot be exercised by the plaintiff in view of the finding recorded. Therefore, the plaintiff cannot be granted injunction against a person who had been found entitled to manage the property of the religious institutions.

Consequently, I do not find any merit in the present appeal and the same is hereby dismissed.

September 12, 2007 **(HEMANT GUPTA)**
ks **JUDGE**